



FH

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/166273

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed May 26, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the iCare in regard to Medical Assistance, a hearing was held on August 11, 2015, at Milwaukee, Wisconsin.

The issue is whether the agency correctly discontinued Petitioner's Family Care Program eligibility because she does not meet functional eligibility requirements.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Atty. Elizabeth Bartlett, General Counsel  
iCare  
1555 N. Rivercenter Drive  
Suite 206  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. Petitioner has been enrolled in the Family Care Program through iCare since March 2011. A functional screening was completed in April 2015 and it was determined that Petitioner no longer met

the requirements necessary for Family Care Program benefits and she was so notified by letter dated May 13, 2015. She timely appealed.

3. Petitioner is 49 years of age (DOB [REDACTED]). She lives alone in the community. She is diagnosed with end stage COPD (a clinical term for stage IV COPD that does not mean end of life), GERD and high blood pressure.
4. On April 16, 2015 the agency conducted a review of Petitioner's functional abilities via an in home assessment. That screening found that Petitioner was independent as to her activities of daily living - bathing, grooming, dressing, eating, toileting, mobility and transferring. The screening acknowledged that Petitioner might need assistance with getting in and out of the shower due to severe shortness of breath.
5. Petitioner was also found to need some assistance with instrumental activities of daily living; specifically, grocery shopping (her sister helps her), laundry, housekeeping and anything beyond very simple meal preparation that requires standing.
6. Petitioner does not have cognitive issues.
7. Petitioner does have grab bars and utilizes a shower chair.

### **DISCUSSION**

The Family Care Program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code at Chapter DHS 10. Also see *Medicaid Eligibility Handbook (MEH)*, Chapter 38. The Family Care Program is a part of the Family Care Program for frail elderly and adults with developmental and physical disabilities. Participation requires a nursing home level of care. *MEH*, §38.3. Also see <https://www.dhs.wisconsin.gov/familycare/fcp-overview.htm>.

As of January 1, 2008 the levels of care for the general Family Care Program are:

1. Nursing Home (formerly Comprehensive NH)
2. Non-Nursing Home (formerly Intermediate and Comprehensive non-NH)

*Wis. Admin. Code*, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate; I note here, however, that Wis. Stat., §46.286, uses the terms “nursing home” and “non-nursing home” levels just as the agency in this case. If the person meets the comprehensive (nursing home) level, s/he is eligible for full services through a care management organization (CMO), including Medical Assistance (MA). *Wis. Admin. Code*, §DHS 10.36(1)(a). If the person meets the intermediate (non-nursing home) level, s/he is eligible for full services only if s/he is in need of adult protective services, s/he is financially eligible for MA, or she is grandfathered as described in §DHS 10.33(3). *Wis. Admin. Code*, §DHS 10.36(1)(b). A person eligible under the non-nursing home level is eligible for less FCP services. Again, for the Family Care Program a person must meet the nursing home level of care, i.e., the comprehensive functional capacity.

Comprehensive functional capacity is defined at *Wis. Admin. Code*, §DHS 10.33(2)(c):

- (c) Comprehensive functional capacity level. A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from

another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
  - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
  - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

A person's long term care needs and the level of care are determined by use of the Long Term Care Functional Screen. The Long Term Care Functional Screen (LTCFS) is a functional needs assessment describing assistance needed with:

- **Activities of Daily Living** (ADL's-bathing, dressing, mobility, transfers, eating, toileting)
- **Instrumental Activities of Daily Living** (IADL's-meal preparation, medication management, money management, laundry, telephone, transportation, and employment)
- **Health Related Tasks** (including skilled nursing)
- **Diagnoses**
- **Behavioral Symptoms and Cognition**

The LTCFS also includes information on risk factors, mental health and substance abuse, and where the person would like to live. *Source: Wisconsin Department of Health Services, online, Adult Long-Term Care Functional Screen, Module #1: Overview of the Long Term Care Functional Screen (LTC FS), §1.1 History. (<http://dhs.wisconsin.gov/ltcare/FunctionalScreen/instructions.htm>)*

The ADLs are bathing, grooming, dressing, eating, mobility in the home, toileting and transferring. The IADLs are meal preparation, medication administration and management, money management, laundry and/or chores, use of the telephone, transportation, overnight care or supervision and employment. *Id.*, *Module #4*. Petitioner is not cognitively impaired so must be unable to safely perform 3 or more activities of daily living; 2 or more ADLs and 1 or more IADLs or 5 or more IADLs to meet the nursing home level of care to be found functionally eligible at the nursing home/comprehensive level of care.

The evidence does not demonstrate that Petitioner meets the nursing home level of care requirements. The only ADL for which she needs some help is bathing and the only IADLs are grocery shopping (her sister helps her), laundry, housekeeping and anything beyond very simple meal preparation. Petitioner does not, therefore, meet the nursing home level of care standard necessary for Family Care Program eligibility.

The evidence does, however, suggest that Petitioner does may meet general Family Care non-nursing home (or intermediate functional capacity) level of care requirements and might be eligible for non-

nursing home level of care services. Intermediate functional capacity is defined at *Wis. Admin. Code, §DHS 10.33(2)(d)*:

d) Intermediate functional capacity level. A person is functionally eligible at the intermediate level if the person is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others, as is evidenced by a finding from application of the functional screening that the person needs assistance to safely or appropriately perform either of the following:

1. One or more ADL.
2. One or more of the following critical IADLs:
  - a. Management of medications and treatments.
  - b. Meal preparation and nutrition.
  - c. Money management.

Petitioner should check with her current provider as to non-nursing home services and/or the Aging Resource Center of Milwaukee County at 414-289-6874 for a referral for non-nursing home level of care services in the general Family Care program and may also ask her current or any other home health care agency to file a prior authorization request with fee for service Medicaid for a personal care worker for assistance with bathing and supportive home cares.

### **CONCLUSIONS OF LAW**

That Petitioner does not meet the nursing home level of care requirement necessary for Family Care Program eligibility.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

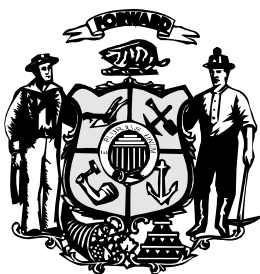
this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 14th day of August, 2015

---

\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 17, 2015.

iCare  
Office of Family Care Expansion  
Health Care Access and Accountability